

Wisconsin State Bar Association Convention

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Repository Citation

H. William Ihrig, *Wisconsin State Bar Association Convention*, 11 Marq. L. Rev. 250 (1927).
Available at: <http://scholarship.law.marquette.edu/mulr/vol11/iss4/8>

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Marquette Law Review

PUBLISHED DECEMBER, FEBRUARY, APRIL, AND JUNE BY THE STUDENTS OF MARQUETTE UNIVERSITY
SCHOOL OF LAW. \$2.00 PER ANNUM. 60 CENTS PER CURRENT NUMBER.

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EDITORIAL

WISCONSIN STATE BAR ASSOCIATION CONVENTION

The International Bar Association which had its inception in this country has lately succeeded in restoring friendly relations between the Bars of the leading opposing countries in the World War. Now efforts are being pressed to insure a closer co-operation, a united study of International Law, and a mutual consideration of many mutual problems.

The American Bar Association is uniting the legal profession of the United States, and great advances are being nurtured under its co-operative guidance and effort to solve the national, interstate, and professional problems of the Bar, the people, and the Law.

Likewise the Wisconsin Bar Association has its unquestioned utility and opportunity to secure and insure a solution of the problems that face the Bench and Bar of our particular state. Each of these divisions—International, National, and State, has its particular sphere of activity, and the Bar Associations of each is very vital to the profession.

Like all large groups, the Wisconsin Bar Association must do much of its work through committees, but at least an annual comprehensive meeting to secure united action, study, mutual exchange, and group consciousness of the Bench and Bar is most desirable and worthwhile.

This year the annual convention of the Wisconsin Bar Association will be held at Green Bay, June 22-24. Each attorney and judge owes it to himself, the profession, and the state to attend this convention. Not alone does duty inspire attendance, but the pleasure of meeting other leading members of the Bench and Bar and of a fraternal gathering of an ancient and honorable profession dictates a dropping of office duties to permit every one to attend the Convention.

The official headquarters, the address will be at Hotel Northland.

The particular time the convention meets is at the brink of summer with its slackening of activities in the courts. No more worthwhile close of the preceding busy season than by attending the convention can be made. Every member of the Bench and Bar should be in Green Bay on Wednesday, Thursday, and Friday, June 22-24, to mix with his brothers.

A Loss

Not only the Bench and Bar and the people of Wisconsin, but those of the whole country join in expressing their kindest sympathy to Justice Marvin P. Rosenberry on the loss that has lately been his in the passing on of his mother.

INTERNATIONAL LAW AND WORLD PEACE

The United States will not become a member of the World Court at present due to the non-acceptance by some of its members of the amendments proposed to the statute creating the court and made a condition precedent to our adherence by the Senate. However, the necessities of the world situation which make our adherence to a World Court desirable and necessary are increasingly with us. To bury our heads in the sand does not protect us although it may make us oblivious to danger.

It was no empty idealism that inspired the idea of the League of Nations and its appended World Court. Nor was it entirely due to a desire to insure the enforcement of the provisions of the Versailles

Treaty. Its creation reflected a world need—a world necessity. Although it may be thought to be a modern smoke screen for ancient usages of selfish diplomacy, the League of Nations and its World Court, in spirit, represent advances in the peace and progress of the world. The creation of the Hague Tribunal and the execution of the various treaties of arbitration for the settlement of international questions in the past, are proof of the world's need of a more peaceful settlement of its disputes.

If the present League of Nations and the World Court prove incapable of securing the high aims they profess to seek, the difficulty may be in themselves, their organization, powers, and representations; in an exaggerated nationalism unmindful of anything but its own immediate advancement, feeding on a fear and devoid of a far-sighted consideration of others and of the reality of economic facts, as opposed to those primarily political; or in a failure to appreciate the necessity and desirability of such institutions for peace for the selfish reasons of self-preservation, advancement, and the self-enjoyment of the fruits nature has endowed nations with, as forced upon us by the necessities of a changed world and its power of destruction by the new implements of war, and by the greatly increased interdependence of the domestic prosperity of nations, which causes difficulties in the seemingly remote markets of the world to find their reflexes in all parts of the world. It was the break in the silk market in Japan that was the primary superficial cause of our depression in 1920. Nations are not self-sufficient, and because they may have the ability to wrest resources or markets from others by force, does not justify such acts. If one nation has an economic advantage over another, it cannot rightfully be deprived thereof by force.

Selfish political reasons may prevent the spirit of the League of Nations and World Court from being clothed with flesh and bone at present. Likewise may it be justly said that the present international irresponsibility prevents the present maturing of the seed we now see sprouting. Each nation, like individuals, best knows its circumstances and problems, and nations like individuals find solving the problems of others much easier than solving their own. The result of this international altruism uncontrolled by personal responsibility, is not at all satisfactory. When selfishness lurks behind the scenes, babblings of "brotherly love" curse the lips that so seek to cover self-aggrandizement. A watchful self-interest always is necessary but self-interest does not mean "all for self."

The United States did not join the League or the World Court, in part because of habits of mind engendered by our apparent geographic insularity, but primarily by a recognition that both of those institu-

tions would reflect the selfishness and activities of men and not the righteous universality of a Governments of Laws. Subsequent history has seen Abdel Krim transported to Isle de Reunion, the Chinese demands for equality ignored in the League, Chinese multitudes slaughtered to impress that nation with fear rather than with respect, ancient Damascus ruthlessly bombarded, and the petitions of its people ignored. It is some consolation to know that the United States is as clear of these stains as it is.

The solution of providing a Government of Laws instead of one of men is being attempted in a very heartening way. Lately President Coolidge expressed himself in favor of world peace by law. While there is no likelihood of our immediate adherence to the League and the World Court, the American people are being educated to the idea. The psychological factor of limiting our egoistic idea of the sovereignty of the state is very vital and necessary. Nations are merely mechanisms of self-interest which have particular distinguishing historical and cultural characteristics separating them from one another. Otherwise, they are merely artificial aggregations of individuals with particular attendant geographical and economic problems and circumstances. We must realize the fact that the necessities of peace and prosperity require that we transcend the limitations of our ideas of sovereignty, power, and nationalism. The world, on this question, faces a conflict between ideas and facts, and the facts must and will win. Ideas not expressive of facts are deceptive and harmful.

All over the world there is a spirited interest in the foundations of International Law. The philosophy underlying it is being subjected to the best sort of criticism and analysis, and in these facts we can see the rearing of solid foundations for a real body of International Law. On this is the future of the world peace and world government dependent.

In India the magazine *The Modern Review*, edited by Romananda Chatterjee, and published in Calcutta, in 1926, presented articles on the positive customs on which International Law is based. In the January, 1927, issue there appears a very interesting article by Benoy Kumar Sarkar entitled "A Preface to the Hindu Categories of International Law." It is interesting to note from this author's discussion of the Grotian complex, the contribution of the Jesuit Suarez (1548-1617). He contended that however self-sufficient the international communities might be, none can live without the help of the others. He established the *need* of certain new laws and customs, called *jus gentium* that can *regulate* this international community. On an examination of our current contributions to the solution of the problem, we find that Professor Reeves, in a series of lectures delivered before the Academy of International Law at The Hague during

1924, in describing the task of his studies which was to "seek out the basic assumption or major premises upon which a valid theory may be built," discarded the traditional doctrine of the *consent* of states as forming the basis of International Law and substituted in its place a sort of *social necessity*—a protection which states are led to give to their mutual rights as the inevitable result of living together in the same world.¹

In Europe extensive thought is being given to the problem in connection with the practical working of the League and the World Court.

In the United States the best legal minds both academic and professional are exploring the field in International Law, and especially in a pragmatic manner which promises to be more fruitful than a mere attempt at seeking out a system of principles. A very able and pragmatic discussion of an advanced type is found in a lecture delivered at the Ohio Wesleyan University, December, 1926, by Professor Edwin D. Dickinson, and which appears in article form in the *Michigan Law Review*, April, 1927. It is entitled "New Avenues to Freedom" and is a survey of some contemporary factors affecting the development of the laws of nations. This is a very worthwhile contribution and bespeaks the author. In connection with this, one should read the article on "Juristic Idealism," by Professor Joseph H. Drake, which appears in the same *Review*. As in domestic law so in the field of law regulating nations there are two aspects—the historical and pragmatic and the philosophic and ideal. In classical International Law these two view-points are primarily embodied in the writings of the Protestant Gentiles (1552-1608) and Grotius (1583-1645), respectively. Reading the two articles referred to will clearly point out the problem facing all students of constructive International Law. Of course, these are merely illustrative of the viewpoints considered, and each has its own field of literature.

Mindful of the conflicting viewpoints in this field of endeavor, the basis for any body of law governing the relations of nations in their intercourse with one another seems to be the necessities arising from that very intercourse. The justification for International Law seems twofold, first, the necessity and desirability of making those relations more peaceful and profitable, and secondly, the necessity of establishing a rule of conduct for the benefit of the whole world. The oft stated interdependence of each part of the world on the others is a real and vital fact. And national self-preservation, international prosperity, and individual happiness require that a restraint be placed upon those who would disturb the balance by force. While it may be a fact

¹ See *Mich. Law Review*, April, 1927, p. 691.

that war is economically profitable, if it is won, but then only by the victor under modern circumstances, yet no nation can possibly win a war which will not cause the general peace and prosperity of the world more harm than good. In the national domestic life the right of unrestrained individual liberty which would cause such a disproportionate loss to society for the mere aggrandizement of one individual therein would not be countenanced. For people in the family of nations to similarly disregard the international well-being is subject to the same limitation of social necessity. For an individual to maintain the right to live a life of individual anarchism in any society is readily perceived to be preposterous. It is a seemingly ideal situation for those who can exercise it, but as an actual fact it is entirely incompatible with the social good. The same may be said of the philosophy of individual anarchism among nations, which are merely artificial, mechanical organizations of self-interest.

The necessity of national and international well-being suggests and will compel and justify the adoption and enforcement as law, of International Law.

To justify adherence and obedience to such law, however, it must be just—equal, in its application. Then arise the questions of justice by right and justice by might, even though the latter sounds preposterous, as may the former, to others. Life is a question of the individual. However, we have other working units as states, nations, dependencies and empires, which are artificial and changing in their form, being dependent for their continuance on other forces, internal and external, than that of mere present legal status. Illustrations of this point are found in the small buffer states established in Europe subsequent to the World War, and in the British Empire which presents a difficulty in the present League of Nations. As for the latter the question of internal and external problems is a sore one. India, the largest member in the Empire, may consider a question concerning itself one for international consideration and decision, while England may deny that position, maintaining that those questions are internal to it and for it alone. Force does and will ultimately decide this question as other similar ones. What application International Law would have under such circumstances is a vital question. Perhaps the principle applicable to political treaties by International Law that they are valid only *rebus sic stantibus*, as long as the state of the world is as it is at the moment of signing, can be formed to practically meet the situation. Thus it might be provided that domestic Europe problems would continue domestic until any dissatisfied group within the empire can assert its sovereignty and be recognized as any government is after a revolution. Undoubtedly this is most practical because, in interfering where a

nation is strong enough to suppress revolutions within itself, more harm can be done by attempting to coerce that nation which therein proves its strength, and also because there would be too much opportunity for selfish actions by malicious meddling with problems of the various nations, thus defeating the end sought to be achieved. Reflexively if any portion of an empire is strong enough to throw off the yolk of empire-ties, to attempt to continue the previous *status quo* would be dangerous and unwise because too great a force would be present to be opposed and no infinite right is had by empires to continue to be recognized as rulers when the portions ruled free themselves from the forces which previously bound them to be subservient to the will and interest of the ruler of the empire.

A philosophical basis must be found for International Law or there will be many disputes due to a variation in fundamental principle in the contentions arising from time to time. Practicality is the origin of International Law and practicality should be its keynote. However, the conflict between the immediate and the ultimate will cause the conflict between the Machiavellian outlook and that of ultimate practicality. It is a conflict, in reality, between the present and the future—postponed present, between the individual nation presently powerful and capable in part of forcing its will, and the society of nations which rise and fall—advance and recede, in accordance with natural forces of economic and social organization and power. To the writer the doctrine of Machiavelli is ultimately harmful and wrong and should be presently curbed. This is not based on a consideration of society as a whole alone, but also on the belief that the total and length of a people's reasonable measure of livelihood is to be preferred for its greater happiness, rather than a temporary flare in the course of history resulting from burning the candle of its resources and abilities at both ends to the loss of its posterity.

The philosophical principle which seems most practical both of adoption and results is that of the Golden Rule, trite and glib as the suggestion may seem. The constitutional guarantees of Life, Liberty and property, in fact all the guarantees in the amendments to the Constitution of the United States, are merely attempts to secure and protect against encroachment, the practical application of the Golden Rule. This principle is both philosophically, religiously and psychologically accurate in expressing the basis of human values and actions from an ethical and moral standpoint. It is a principle which satisfies the selfish urgings in individuals when they are restrained for the social good. It satisfies because its egoistic appeal to the individual is to the effect that although he is limited for the benefit of others, likewise are others limited for his benefit and is he benefited by the same limitations on

others. It stimulates the idea of equality and thus does not give the possibility of trouble due to instinctive attempts to remove conditions or suggestions of inferiority, and to thus disturb the equilibrium of world relationships unnecessarily. Furthermore, this principle allows for the smooth operation of the actual long time supremacy of economic and social-individual, intellectual and the like, forces. Past and present conditions of relative superiority in competitive effectiveness among nations are meaningless when their intrinsic superiority vanishes, and thereafter they provide no adequate excuse for their continued limitation on similar intrinsic superiority which a subsequent act or force would set up. Time and individual action prove intrinsic value against those competitively weaker in our world of eternal flux and change, and this principle coupled with force based on facts is superior to insure world-peace, prosperity and progress, to the mere play of force unlimited in action by a social will which it is dependent upon and interwoven with, in spite of its contrary egotistical promptings.

Admittedly the domestic solutions in the legal systems of the world can be used with great force in suggesting legal principles in a Law of Nations. Nations merely present larger aggregations of rights than those involved in ordinary litigations between individuals, although the principles involved are no greater. The consequences may be more far-reaching but this merely suggests a greater cautiousness in the growth and province of International Law and in its application in individual cases. The present power of nations will insure a too rapid growth of law covering this phase of the world's activities, which would be harmful due to any actual impracticality, but the extensive study being given to the problems involved suggests that an ultimate solution is not far distant.

H. WILLIAM IHRIG